

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ROSEANNE SORVIG,)	DOCKET NO.: PT-1998-13
Appellant,)	
)	
-vs-)	
)	
DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal came on regularly for hearing on the 2nd day of November, 1999, in the City of Lewistown, Montana. The taxpayer, Roseanne Sorvig, appeared on her behalf, as did Russell Spika, certified public accountant. The Department of Revenue (DOR), represented by Chuck Pankratz, Region 2 Leader, presented testimony in support of the DOR appraisal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The subject property involved in this appeal is described as follows:

The west half of Lots 4 and 5, Block 12, PDT Addition to the City of Lewistown, County of Fergus, State of Montana, and the improvements located thereon with a street address of 421 West Virginia Street. (Assessor's Code 0000000149).

3. For the 1998 tax year, the DOR appraised the subject property at a value of \$6,750 for the land and \$27,150 for the improvements. The taxpayer appealed to the Fergus County Tax Appeal Board on June 1, 1998 requesting an unspecified reduction in value for the reasons: "Incorrect data used for determining assessment of my property; square footage of residence, age of residence, and condition of residence."

4. In its August 27, 1998 decision, the County Board denied the appeal, stating "Was adjusted by DOR 6-23-98."

5. The taxpayer then appealed that decision to this Board on September 22, 1998, stating "The adjustment made on 6-23-98 was made without proper knowledge of age of house - Exhibit B. Please see attached reasons and Exhibits A-B-C. #1.

There was no explanation given for the description change made to my property from the original appraisal (Exhibit A). My residence was changed from having a 200 sq. ft. basement, to having a full, 1330 sq. ft. basement and from being in fair condition to being in good condition (Exhibit A), without me being contacted or the home being inspected. When I called to have the description corrected (Exhibit A), I was told the description would be checked out. #2. The adjustment that was made on 6/23/98 (Exhibit C), was made before evidence on the history of the residence was obtained from the original owner (Exhibit B). The construction year was only adjusted from 1952 to 1945, instead of 1920's. To my knowledge, the correct year of my home has still not been corrected. #3. The Assessor admitted at my tax appeal that there was major fire damage done to the sub-floor of my home, and that the foundation was in poor condition. He acknowledged having seen that vegetation was growing through the foundation, yet he still rated my home as being in "fair" condition. #4. My taxes have been based on an incorrect property description since even before I noticed it (Exhibit A), and complained in 1994. The year built was listed as 1952, and the exterior finish is listed (sic) was aluminum. To place the value back to the original assessment valued placed in 1994, still does not correct the over assessed value of that date."

TAXPAYER'S CONTENTIONS

Ms. Sorvig purchased the subject home on November 17, 1993 for \$43,230 (DOR Exhibit F - a copy of the realty transfer certificate regarding this transaction). She characterized the local market conditions at that time as a "sellers' market" and testified that she didn't believe the home had been on the market for an extended period of time before she purchased it. Mr. Spika testified that, during the 1996-1997 time period, there was a substantial downturn in the local economy (the closing of two gold mines, a lumber mill, a clothing manufacturing enterprise and a slowing of the construction industry). At the time of this purchase, Ms. Sorvig testified that she thought she was purchasing a home built in 1952, which had experienced significant remodeling in 1957, as did the appraiser for the Farm Home Administration through which Ms. Sorvig sought financing. She stated the Farm Home Administration appraiser gained his information about the age of the home through county documents.

Ms. Sorvig voiced concerns about the coincidental nature of the AB 26 property review results which placed the value in dispute at the level experienced in 1994 (\$33,900) and that the age and condition of the home have not been adequately recognized by the DOR. Taxpayer's Exhibit 1 is an August 22, 1998 statement by a prior owner (Clestone Bertus) that the

subject home was constructed in the 1920's and moved to its present location in the 1940's. This exhibit also presents a copy of a picture of the home as it appeared in the 1920's. The DOR records indicate that the home was constructed in 1952.

The home contains two bedrooms, one bathroom, a living room, dining room, a kitchen and a utility porch, according to Ms. Sorvig.

Ms. Sorvig enumerated various value-diminishing defects present in the home: the original wood foundation is still present and may possibly be rotting as evidenced by the presence of vegetation/foliage growing through the foundation; the original chimney stack is present; the sub-floor experienced significant fire damage at some time in the past and, while it was reinforced, has not been adequately repaired in her view; the original basement, which contains no floor drain, is still present, as are the original windows.

DOR'S CONTENTIONS

In response to a question by Ms. Sorvig, Mr. Pankratz explained that the Legislature mandated that the effect of the 1997 statewide reappraisal of property was to be phased in at two percent per year for tax years 1997 and 1998 and that a legislative amendment in the 1999 legislative session accelerated the phase in of the 1997 reappraisal to 25 percent for tax year 1999. However, the taxable percentage, another

factor involved in determining a property tax assessment, was lowered. The taxpayer is receiving a 30 percent low income property tax reduction in taxable value for tax year 1999 as well. (The combination of all of the foregoing adjustments has resulted in a final 1999 land value of \$3,855 and an improvement value of \$22,806, or a total value of \$26,661.)

Mr. Pankratz testified that he reviewed the subject property, with Ms. Sorvig present, just prior to the hearing before this Board. He stated that there was extensive remodeling performed on the home in 1957. He was shown the concrete foundation wall, which appeared to be solid and without cracks except for some settling at the doors. The vegetation/foliage discussed by the taxpayer appeared to be coming from a dugout crawlspace/basement.

The immediate subject neighborhood is without curbs and gutters with a gravel street in front of the subject home.

Mr. Pankratz noted that the sub-floor fire damage discussed by the taxpayer did appear to be "rather severe" and observed that, while the damaged area appeared to have been reinforced, "I'm surprised whoever had that fire didn't do more work in the restoration. . ."

DOR Exhibit B is a copy of the 1998 revised assessment notice relating to the subject property that was mailed to the taxpayer after the adjustments were made, pursuant to the AB 26

property review request. This document shows a revised property value of \$33,900. DOR Exhibit D is a copy of that AB 26, which indicates that an internal inspection of the property was conducted on June 2, 1998 at the request of the taxpayer. The result of that review, from DOR Exhibit D, was as follows:

The following corrections and adjustments to the property record information were made: exterior wall covering changed to wood; roof covering changed to metal; basement area reduced from 1,332 sq. ft. to 200 sq. ft., effective age of property reduced from 1952 to 1945; condition, desirability, and utility (CDU) reduced from AV (average) to FR (fair) due to general condition of the house, including extensive fire damage to the subfloor and floor joists. The fire damage has had repair work done and may have been structurally corrected. Exterior measurements were checked and found to be accurate. These corrections and adjustments reduce 1998 reappraisal value from \$40,900 to \$33,900.

DOR Exhibit C is a copy of a photograph of the subject property as well as a copy of the property record card. The land size is listed as a 6,750 square foot lot valued at \$1.00 per square foot. The property is located in Neighborhood 3B (downtown Lewistown area). Land in the immediate area of the subject was valued at \$1.00 per square foot based upon sales information (The average price per square foot -- \$0.99 -- of seven of nine sales occurring in the time frame required of the current appraisal cycle - January 1, 1993 through December 31, 1995). The property record card also shows that the basement area was adjusted to 200 square feet.

The construction year for the home is listed on the property record card as 1952. DOR Exhibit E is a copy of a document entitled "City and Town Building Appraisal for Fergus County, Montana" which shows that the subject home was remodeled in 1957 and contains the notation that it was "old-moved in." The DOR has assigned an effective age of 1945. The effective age of the home is actually less than the year indicated built, based on a more subjective review by the DOR appraiser to determine how the home represents itself on the market. The effective age is a measurement of the amount of depreciation allowed to a dwelling or structure. In most cases, according to Mr. Pankratz, one would find a home's effective age to be greater than its year of construction due to normal maintenance and upkeep. The subject home has been afforded more depreciation than is typical, in recognition of its general condition, including the presence of fire damage to the sub-floor and floor joists. The general condition of the home has also been recognized through the reduction of the CDU (condition, desirability and utility) of the home from "average" to "fair."

Mr. Pankratz testified that the home was valued using the sales comparison approach. DOR Exhibit C, page four, contains a copy of the Montana Comparable Sales sheet for the subject property, which can be summarized as follows:

Subject	Comp. 1	Comp. 2	Comp. 3	Comp. 4	Comp. 5
0.15 acres	0.10 acres	0.10 acres	0.20 acres	0.15 acres	0.15 acres
1.0	1.0	1.0	1.0	1.0	1.0
None	None	None	None	None	None
Wood Sdg.		Shingle	Alum/Vinyl	Brick	Brick
Conven.	Conven.	Old Style	Old Style	Conven.	Conven.
1952/45	1935/00	1935/48	1915/43	1900/25	1900/25
r.					
Part.	Full	Full	Full	None	None
02/0/04/1/0	03/0/05/1/0	03/0/05/1/0	03/0/07/1/0	03/0/06/1/0	03/0/06/1/0
Central	Central	Central	Central	Central	Central
0	0	0	0	0	0
0	0	0	0	0	0
4	4	4	5	4+	4+
FR	PR	AV	AV	AV	AV
1,332	1,370	1,370	1,374	1,185	1,185
0	0	0	0	0	0
1,332	1,370	1,370	1,374	1,185	1,185
0	0	0	252	0	0
0	0	0	0	0	0
36	30	30	125	165	165

Subj.	Comp.1	Comp.2	Comp.3	Comp.4	Comp.5
-------	--------	--------	--------	--------	--------

Closed Porch Area	0	0	0	0	168	168
Sale Date		10/93	01/95	06/95	09/95	10/94
Sale Price		\$28,000	\$45,000	\$54,000	\$45,000	\$33,750
MRA Est.	\$32,961	\$28,490	\$37,938	\$50,099	\$43,613	\$39,051
Adjust. Sale		\$32,470	\$40,023	\$36,861	\$34,347	\$27,660
Comparability		77	93	98	99	100
Weighted Estimate	\$34,282					
Market Value	\$33,900					
Field Control Code	3					

BOARD DISCUSSION

Ms. Sorvig's main contentions were that the age and the general condition of the home were not adequately recognized by the DOR.

Mr. Pankratz' testimony was that the DOR has attempted to adjust for the problems discussed by the taxpayer. His personal inspection of the property led him to the conclusion that the concrete foundation appeared to be structurally sound and that the damage to the sub-floor and floor joists, while significant, did appear to have been repaired. In recognition of that

defect, however, as well as the presence of vegetation/foilage in the crawlspace area, the DOR lowered the CDU from "average" to "fair" and placed the effective age at 1945 despite the fact that the home underwent a significant remodel in 1957. In most cases, a significant remodel will extend the effective age of a structure. In the present case, the effective age is less than what would be expected in light of the remodel. The CDU and the effective age are tools by which the DOR measures the amount of depreciation afforded to a structure.

The Board finds that, through the above adjustments, the DOR **has** adequately recognized any value-diminishing aspects of the subject home. These adjustments, coupled with the sales information presented in DOR Exhibit C, and the taxpayer's statement of the purchase price in 1994, lead this Board to the conclusion that the DOR has arrived at a satisfactory market value for tax year 1998. As discussed at the hearing before this Board, the actual age of a structure has no bearing on the ultimate market value determination. The driving factor is the effective age which recognizes depreciating aspects of a property.

Regarding the taxpayer's contention that the Lewistown economy took a downturn in 1996-1997, the Board notes that the general assessment date, or the DOR's "target" date, for the current appraisal cycle is January 1, 1996, pursuant to Section

15-8-201, MCA. The next appraisal cycle should recognize economic conditions present during 1996 and 1997.

The appeal of the taxpayer is therefore denied and the decision of the Fergus County Tax Appeal Board is affirmed.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **15-2-301 MCA.**

2. **15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

4. **15-7-112. Equalization of valuations.** The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided. (Emphasis supplied.)

5. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that

the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Fergus County by the Assessor of said County at the value of \$6,750 for the land and \$27,150 for the improvements as determined by the Department of Revenue and affirmed by the Fergus County Tax Appeal Board.

DATED this 12th of November, 1999.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of November, 1999, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Roseanne Sorvig
421 West Virginia Street
Lewistown, Montana 59457-1440

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Appraisal Office
Fergus County
County Courthouse
Lewistown, Montana 59457

John Lubinus
Chairperson
Fergus County Tax Appeal Board
RR1 Box 1688
Lewistown, Montana 59457

DONNA EUBANK
Paralegal